



NEW YORK CITY HOUSING AUTHORITY
LAW DEPARTMENT
250 BROADWAY • NEW YORK, NY 10007
<http://nyc.gov/nycha>

TINO HERNANDEZ
CHAIRMAN

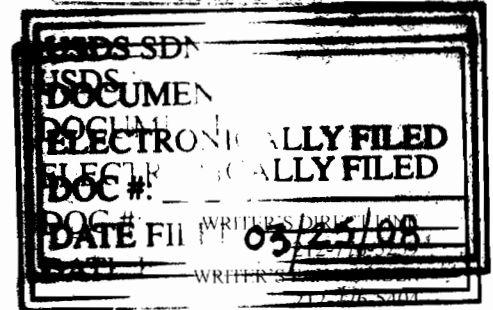
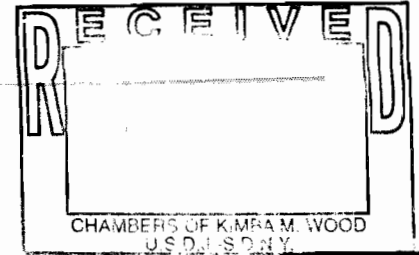
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GENERAL MANAGER

Ricardo Elias Morales
General Counsel



March 20, 2008

By Hand

The Honorable Kimba M. Wood
Chief United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1610
New York, New York 10007

MEMO ENDORSED

Re: *Gerard O'Neill v. Tino Hernandez, Ricardo Morales, and New York City Housing Authority*,
08 CV 1437 (KMW)
Defendants' Intent to Make Rule 12(b) Motion and Request for Adjournment of Conference

Dear Chief Judge Wood:

I am an attorney with the New York City Housing Authority (NYCHA) Law Department, and I represent the defendants Tino Hernandez, Ricardo Morales, and New York City Housing Authority in the above-referenced matter. Defendants will be serving a Rule 12(b) motion to dismiss in lieu of filing an answer by April 11, in conformance with the Court's March 7, 2008 Memo Endorsed Order. Defendants respectfully request that Court adjourn the March 28, 2008 pretrial conference until after defendants' motion has been decided. Plaintiff has not responded to counsel's telephone call and message left for him early Tuesday afternoon regarding defendants' request.

Plaintiff Gerard O'Neill is a tenant at Douglass Houses, a New York City Housing Authority (NYCHA) housing development located in Manhattan. On February 20, 2008, defendants filed a Notice of Removal removing plaintiff's state court action previously filed in the Supreme Court of the State of New York, County of New York, under New York County Index No. 400199/08. In his complaint, plaintiff alleges, among other things, that NYCHA has brought State court non-payment proceedings against him in 2005 and 2006 in violation of the Brooke Amendment (42 U.S.C. 1437a(a)(1)(A)); that a document was removed from his tenant folder; that his refusal to sign

granted
KMW
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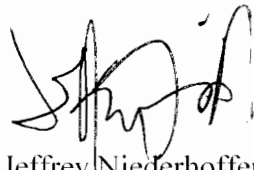
a third-party verification form giving permission for a NYCHA housing assistant to access a federal database to verify his income led to the non-payment proceedings; that, the day after a court appearance in which a State Court judge threatened to re-sign a pending eviction, four social workers from NYCHA knocked on his door unannounced and later telephoned him. Plaintiff seeks to recover compensatory and punitive damages under the Brooke Amendment (42 U.S.C. 1437a(a)(1)(A)), Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e *et seq.*), the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and the Fair Housing Amendments Act (FHAA) (42 U.S.C. §§ 3601-3619).

After removal, the matter was referred to your chambers as possibly similar to a prior action filed by plaintiff bearing civil action number 06-CV-14377. On March 5, 2008, the Court issued a Scheduling Order setting a pretrial conference for March 28, 2008. On March 7, 2008, the Court granted defendants' request for an extension of time within which to respond to the complaint, either by making a Rule 12(b) motion or filing an answer by April 11, 2008.

Defendants will be moving to dismiss the Complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that plaintiff has failed to state a cognizable cause of action and that his challenge to the State court non-payment proceedings is meritless nonetheless. Defendants' propose that, in accordance with Local Rule 6.1, plaintiff's opposition papers be served within ten (10) business days after service of defendants' motion papers and that defendants' reply papers be served on plaintiff within five (5) business days after service of plaintiff's opposition papers. Further, defendants propose that the parties not proceed with discovery pending the Court's decision on the motion. In view of defendants' intention to serve a dispositive Rule 12(b) motion, defendants respectfully request that the Court adjourn the March 28, 2008 conference.]g routed
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Thank you for your consideration of this request.

Respectfully,



Jeffrey Niederhoffer (JN 1942)

c: Gerard O'Neill
 870 Columbus Avenue, Apt. # 3C
 New York, New York 10025
 (by first class mail)

The Court grants Defendants' request. Defendants shall file a Rule 12(b) motion to dismiss no later than April 11, 2008. The Court hereby adjourns the March 28, 2008 conference until after a decision issues regarding Defendants' motion to dismiss.

3-24-08
 SO ORDERED, N.Y., N.Y.

Kimba M. Wood
 KIMBA M. WOOD
 U.S.D.J.